

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
EXECUTIVE OFFICE OF THE PRESIDENT  
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CONTACT: JAY ZIEGLER  
HELAINE KLASKY  
(202) 395-3230**

**UNITED STATES TO APPLY ITS WTO RETALIATORY RIGHTS IN BANANAS CASE**

Today the United States formally notified the WTO Dispute Settlement Body (DSB) of its intention to exercise its right to suspend concessions to the European Communities (EC) on certain products covering trade of about \$520 million in accordance with WTO procedures. The value of the proposed suspension represents an estimate of the annual harm done to the U.S. economy resulting from the EC's banana regime. This action was taken because the EC implemented measures on January 1, 1999, that perpetuate discriminatory aspects of the regime identified by a WTO panel and Appellate Body as being WTO-inconsistent. "We take this step because of the EC's failure to comply with WTO rulings," United States Trade Representative Barshefsky said.

Ambassador Barshefsky also reiterated the desire of the United States to negotiate a WTO consistent solution. The United States plans to invoke formal WTO consultative mechanisms that require such negotiations. "We proposed to the EC substantive negotiations over 18 months ago to resolve this WTO dispute, and the EC has refused" said Ambassador Barshefsky. "We are now making another attempt to try to work this out while there is still time to do so," she stressed. "After all, the purpose of the WTO is to resolve disputes, not to engage in protracted legal debates," she explained.

**BACKGROUND**

Since the late 1980's Latin American countries and the United States have urged the member States of what is now the EU to implement the "Single Market" for bananas in a manner consistent with their international obligations under the 1947 General Agreement on Tariffs and Trade (GATT) and the subsequent international agreements under the World Trade Organization (WTO). A group of Latin American countries -- Colombia, Costa Rica, Guatemala, Nicaragua and Venezuela tried twice in the GATT to convince the EU to reform its discriminatory and burdensome banana rules; twice GATT panels found that EU banana rules were GATT-inconsistent (1993, 1994); twice the EU ignored those GATT panels and proceeded to extend and compound unfair and discriminatory trade barriers.

The U.S. economic stake in this case is clear. The EU's licensing system has deprived U.S. banana distribution companies, Chiquita and Dole foods, of half of their business. Likewise, the four Latin

American countries – Ecuador, Guatemala, Honduras, and Mexico -- which were part of this case, are fighting too for fair access to the European market. Panama, a new WTO member, has joined this effort.

On February 5, 1996, the governments of Ecuador, Guatemala, Honduras, Mexico, and the United States jointly and severally requested consultations under Article 4 of the Dispute Settlement Understanding (DSU) concerning the EC banana regime. Both the subsequent panel and Appellate Body proceedings resulted in reports finding the EC regime in violation of numerous provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the General Agreement on Trade in Services (GATS). On September 25, 1997, over 19 months after the request for consultations, the DSB adopted the report of the panel, as modified by the Appellate Body. Among others, the DSB's resulting recommendations and rulings include the recommendation that the EC bring the measures found to be inconsistent with the GATT 1994 and the GATS into conformity with its obligations under those agreements.

Following the adoption of the DSB recommendations and rulings, the EC declined to discuss their substance with the United States and to engage in any discussions to explore a mutually acceptable solution. During the week of June 22, 1998, the EC Council of Agriculture Ministers agreed, with few modifications, on proposed amendments to the EC banana regime that had been approved by the European Commission on 14 January as a draft regulation. On July 20, the EC Council of Agriculture Ministers formally approved the EC draft regulations. These provisions and those of future implementing regulations adopted in October perpetuate violations of both the GATT and the GATS that had been found by the DSB to be WTO-inconsistent.

The United States tried on several occasions to convince the EC to reconvene the original panel – in July, September and November with the objective of resolving this dispute while preserving our rights. Each time the EC either outright refused or imposed unacceptable conditions.